

**Initial Statement of Reasons**

**Proposed Adoption of**

**California Code of Regulations, Title 18, Section 1685.5,**

***Calculation of Estimated Use Tax - Use Tax Table***

**SPECIFIC PURPOSE AND NECESSITY**

Prior Law

Revenue and Taxation Code (RTC) section 6452.1, as enacted by Statutes 2010, chapter 721, section 2, permits taxpayers to make an irrevocable election to report “qualified use tax” on an “acceptable [income] tax return” filed with the Franchise Tax Board (FTB) in order to make it more convenient for taxpayers to comply with their use tax obligations. RTC section 6452.1, subdivision (d)(2), as enacted by Statutes 2010, chapter 721 defined the term “qualified use tax” to mean a taxpayer’s actual unpaid use tax liability after applying the state use taxes imposed under the Sales and Use Tax Law (RTC § 6001 et seq.) and section 35 of article XIII of the California Constitution, and the local and district use taxes imposed in conformity with the Bradley-Burns Uniform Local Sales and Use Tax Law (RTC § 7200 et seq.) or in accordance with the Transactions and Use Tax Law (RTC § 7251 et seq.) to the taxpayer’s purchases of tangible personal property subject to use tax.

Current Law

Senate Bill No. (SB) 86 (Stats. 2011, ch. 14) was enacted on March 23, 2011. It amended RTC section 6452.1 to make it more convenient for taxpayers to comply with their use tax obligations by giving taxpayers the option to report their “estimated use tax liabilities,” based upon their adjusted gross income for income tax purposes, for one or more single nonbusiness purchases of individual items of tangible personal property each with a sales price of less than one thousand dollars (\$1000), as determined from a use tax table, instead of calculating and reporting their actual unpaid use tax liabilities (as described above). In addition, RTC section 6452.1, subdivision (d)(2)(A)(i)(II), as amended by SB 86, provides that “the Board shall annually calculate the estimated amount of use tax due according to a person's adjusted gross income and by July 30 of each calendar year make available to [the] Franchise Tax Board such amounts in the form of a use tax table” for inclusion in the instructions to the FTB’s returns and use by eligible taxpayers.

Proposed Regulation

The Board proposes to adopt Regulation 1685.5 to prescribe the use tax table that taxpayers may use to estimate their calendar-year 2011 use taxes based upon their adjusted gross income, prescribe the manner in which the Board shall annually calculate

the estimated amount of use tax due according to a person's adjusted gross income for calendar-year 2012 and subsequent years, and prescribe the format of the use tax tables the Board must make available to the FTB each year. The objectives of the proposed regulation are to fulfill the Board's duty to estimate the amount of use tax due according to a person's adjusted gross income and make the estimate available to the FTB in the form of a use tax table for calendar-year 2011 and to clearly prescribe the manner in which the Board shall estimate the amount of use tax due according to a person's adjusted gross income and make the estimate available to the FTB in the form of a use tax table for calendar-year 2012 and subsequent years.

During its April 26, 2011, meeting, the Board determined that it was necessary to adopt Regulation 1685.5 for the specific purposes of implementing, interpreting, and making specific the provisions of RTC section 6452.1 providing that "the Board shall annually calculate the estimated amount of use tax due according to a person's adjusted gross income and by July 30 of each calendar year make available to [the] Franchise Tax Board such amounts in the form of a use tax table" and prescribing the use tax table for calendar-year 2011.

There are no comparable federal regulations or statutes to Regulation 1685.5.

#### **DOCUMENTS RELIED UPON**

The Deputy Director for the Board's Sales and Use Tax Department, Jeffrey McGuire, submitted a memorandum dated April 15, 2011, to the Board Members for consideration at the April 26, 2011, Board meeting, which contained staff's request for the Board's authorization to begin the formal rulemaking process to adopt Regulation 1685.5. The Board relied upon the April 15, 2011, memorandum, the exhibits to the April 15, 2011, memorandum, which illustrate the text of proposed Regulation 1685.5 and identify the sources of the data the Board will use to perform the calculations prescribed by Regulation 1685.5, and comments made during the April 26, 2011, discussion of the April 15, 2011, memorandum in deciding to propose the adoption of Regulation 1685.5.

#### **ALTERNATIVES CONSIDERED**

The Board considered whether to begin the formal rulemaking process to adopt proposed Regulation 1685.5 at this time or, alternatively, whether to take no action at this time and seek additional input from interested parties. However, the Board decided to begin the formal rulemaking process to adopt the proposed regulation at this time in order to comply with deadlines for including the Board's use tax table in the instructions to the FTB's 2011 income tax returns.

#### **NO ADVERSE ECONOMIC IMPACT ON BUSINESS**

The adoption of proposed Regulation 1685.5 will enable the Board to implement the provisions of RTC section 6452.1 providing that "the Board shall annually calculate the estimated amount of use tax due according to a person's adjusted gross income and by

July 30 of each calendar year make available to [the] Franchise Tax Board such amounts in the form of a use tax table” and prescribe the use tax table for calendar-year 2011. Eligible taxpayers will have the option to use the Board’s use tax tables to estimate their use tax liabilities for calendar-year 2011 and subsequent years, but taxpayers may also choose to continue to calculate and report their actual unpaid use tax liabilities (as discussed above). Furthermore, the adoption of the proposed regulation will not impose any new taxes, and it will not change any exemptions or exclusions. Therefore, the Board has made an initial determination that the adoption of proposed Regulation 1685.5 will not have a significant adverse economic impact on business.

The proposed regulation may affect small business.